



FISCAL MEMORANDUM

HB 1444 - SB 1349

March 30, 2023

SUMMARY OF BILL AS AMENDED (005221, 006277, 006910): Requires a person committing the offenses of: (1) vehicular homicide and leaving the scene of an accident, and (2) driving under the influence (DUI) as a fifth, sixth, or subsequent offense, to serve 100 percent of the sentence imposed by the court undiminished by any sentence reduction credits.

Deletes the authorization for a judge to sentence a first-time offender in Davidson County to serve 200 hours of community service in lieu of the minimum 48-hour jail sentence for DUI with a blood alcohol concentration (BAC) between 0.08 and 0.19 percent, or the 7- consecutive days sentence for DUI with a BAC of 0.20 percent or more.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Expenditures – \$721,100 Incarceration

Increase Local Expenditures – \$2,200/FY23-24 and Subsequent Years*

Assumptions:

Vehicular homicide and leaving the scene of an accident:

- Pursuant to Tenn. Code Ann. § 39-13-213, vehicular homicide as the proximate result of conduct creating a substantial risk of death or serious bodily injury to a person or conduct constituting the offense of drag racing is a Class C felony offense.
- Pursuant to Tenn. Code Ann. § 40-35-501(cc), as amended by Public Chapter 988 of 2022, a person convicted of a Class C felony of vehicular homicide on or after July 1, 2022 is required to serve 100 percent of the sentence imposed, provided that earned credits may reduce the sentence imposed by up to 15 percent.
- The average sentence for a Class C felony offense of vehicular homicide is 5.82 years. Therefore, it is assumed that a person convicted of Class C felony vehicular homicide under current law would serve 4.95 years (5.82 x 85%).
- Pursuant to Tenn. Code Ann. § 55-10-101(b)(1)-(2), leaving the scene of an accident resulting in injury or death of any person is a Class A misdemeanor, enhanced to a Class E felony if the person left the scene of an accident and knew or should reasonably have known that death resulted from the accident. A person charged with Class E felony leaving the scene of an accident that is also charged with vehicular homicide is required

to serve any sentence imposed consecutive to a sentence imposed for that of vehicular homicide.

- Based upon information provided by the Department of Correction (DOC), there has been an average of 1.1 admissions per year over the last 10 years for the Class E felony offense under Tenn. Code Ann. § 55-10-101 for leaving the scene of an accident that resulted in a death.
- The average sentence for the Class E felony leaving the scene of an accident is 2.14 years. The average time served for a Class E felony leaving the scene of an accident is 0.66 years.
- Accounting for recidivism rates, the proposed legislation will result in 0.75 admissions annually serving an additional 0.87 years (5.82 – 4.95) for vehicular homicide and an additional 1.48 years (2.14 – 0.66) for leaving the scene of an accident, with both sentences to be served consecutively.
- Pursuant to Tenn. Code Ann. § 9-4-210, this analysis estimates the highest cost for admissions in the next three years; therefore, any additional time added by the proposed legislation resulting in sentences exceeding three years in length surpass the window of this analysis and will not significantly impact incarceration costs.

DUI as a fifth, sixth, or subsequent offense:

- Pursuant to Tenn. Code Ann. § 55-10-402(a)(5)(A), a conviction for a fifth offense of driving under the influence is a Class D felony.
- Based upon information provided by the DOC, there has been an average of 10 admissions per year over the last three years for the Class D felony offense under Tenn. Code Ann. § 55-10-401(a)(5)(A) for a fifth DUI.
- The average sentence for the Class D felony of fifth DUI is 3.05 years.
- The average time served for a Class D felony of fifth DUI is 0.58 years.
- Accounting for recidivism rates, the proposed legislation will result in 5.72 admissions annually serving an additional 2.47 years (3.05 – 0.58).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- The weighted average operational costs per inmate per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- The estimated increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 76,900	FY23-24
\$ 183,800	FY24-25
\$ 265,200	FY25-26

- Pursuant to Tenn. Code Ann. § 55-10-402(a)(6)(A), a conviction for a sixth or subsequent offense of driving under the influence is a Class C felony.

- Based upon information provided by the DOC, there has been an average of 18.6 admissions per year over the last five years for the Class C felony offense under Tenn. Code Ann. § 55-10-401(a)(6)(A) for a sixth or subsequent DUI.
- The average sentence for the Class C felony of sixth or subsequent DUI is 5.30 years.
- Pursuant to Tenn. Code Ann. § 40-35-501(v), as amended by Public Chapter 486 of 2019, a person convicted of a sixth or subsequent offense for DUI on or after January 1, 2019 is required to serve 100 percent of the sentence imposed, provided that earned credits may reduce the sentence imposed by up to 15 percent.
- Therefore, it is assumed that a person convicted of a sixth or subsequent DUI under current law would serve 4.51 years ($5.30 \times 85\%$).
- The average time served for the Class C felony of sixth or subsequent DUI is 1.22 years.
- Accounting for recidivism rates, the proposed legislation will result in 10.63 admissions annually serving an additional 3.29 years ($4.51 - 1.22$).
- The estimated increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 56,100	FY23-24
\$ 254,800	FY24-25
\$ 455,900	FY25-26

- Pursuant to Public Chapter 1007 of 2022, recurring costs increases are to be estimated on the highest of the next three fiscal years; therefore, the recurring increase in incarceration costs will be \$721,100 ($\$265,200 + \$455,900$).
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal note are available upon request.

DUI for a first-time offender:

- Pursuant to Tenn. Code Ann. § 55-10-402(a)(1)-(3), DUI is a Class A misdemeanor and requires a minimum sentence as follows:
 - First Conviction: 48 consecutive hours; or 7 consecutive days if the person has a BAC of 0.20 percent or more;
 - Second conviction: 45 consecutive days; or 25 days, with completion of a clinical substance abuse assessment; and
 - Third conviction: 120 consecutive days, or 65 days with completion of a clinical substance abuse assessment.
- Pursuant to Tenn. Code Ann. § 55-10-402(g), the judge is authorized to sentence a first-time offender in Davidson County to serve 200 hours of community service in lieu of the minimum 48-hour or 7-day jail sentence.
- The proposed legislation deletes this authorization, resulting in such offenders being required to serve a minimum of 48-hours or 7 days in jail.

- Based on information provided by the Administrative Office of the Courts, there have been an average of 269 convictions for DUI in Davidson County in each of the last 10 years.
- This analysis estimates that of the 269 DUIs, an average of 188 are first time offenses with a BAC between 0.08 and 0.19 percent, 13 are first time offenses with a BAC 0.20 percent or greater, 40 are second time offenses, and 28 are third times offenses.
- This analysis assumes all first-time offenders with a BAC of 0.20 percent or greater are currently serving the minimum 7-day jail sentence.
- This analysis estimates 10 percent or 19 (188 x 10.0%) of first-time DUI offenders with a BAC between 0.08 and 0.19 percent will be required to serve 48 hours in local jail, that would have served 200 hours of community service under current law.
- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$58.21.
- The recurring mandatory increase in expenditures to local governments is estimated to be \$2,212 (19 convictions x \$58.21 x 2 days) in FY23-24 and subsequent years.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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